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SUBJECT: HOLOCAUST ART RESTITUTION: SEMINAR EXPLORES ROLE FOR INTERNATIONAL ARBITRATION

1. Summary and Action Request: The Permanent Court of Arbitration hosted a seminar to explore whether international arbitration is a suitable mechanism for resolving claims involving Nazi-looted art. Legal experts agreed that arbitration could play a useful role and some advocated establishment of a standing arbitral body to handle such disputes. Art historians stressed that support for high quality archival research was a key element in establishing provenance and resolving claims. The PCA will convene a small working group of interested legal experts to consider next steps. The PCA would welcome the participation of a USG expert in the process should we wish to identify one. We would appreciate guidance on how to respond to PCA's invitation for USG participation on the working group. End Summary

2. The Hague-based Permanent Court of Arbitration (PCA) brought together international legal experts and art historians on May 23 in a seminar to discuss resolution of cultural property disputes. The purpose of the seminar - which focused on claims associated with Nazi-looted art - was to identify the key issues in resolving stolen art claims and consider whether international arbitration mechanisms could play a useful role.

3. Several of the legal experts (including Owen Pell of the law firm White and Case and Hans Das of the Catholic University of Leuven) argued that national dispute settlement measures are inadequate as they often turn on the sheer happenstance of where the art has come to rest - with some jurisdictions completely precluding recovery. Legal experts were also confident of finding acceptable ways to bridge systemic differences between countries with civil law and common law systems regarding issues such as evidentiary standards, burdens of proof, and applicability of purchasers' good faith. These legal experts suggested that a standing arbitral body modeled on that modeled on the Law of the Sea Convention could play an important role in resolving Holocaust and other stolen art-related disputes.

4. Some conference participants were not convinced that establishment of an international arbitration mechanism is necessary or worthwhile. While not directly conveying these misgivings during the public sessions, they told us on the margins that most cases are being adequately handled through national or alternative dispute settlement mechanisms and that only a handful of cases would ever be referred for international arbitration.

5. Art historians underscored that a relatively complete accounting of World War Two-era looted art can only come about through more extensive and higher quality archival research. This requires familiarity not only with the location of relevant archives but their organizational structures and recordkeeping quirks. Extensive online databases, one historian noted, are of limited value because of the inconsistent and imprecise manner in which individual works are described and recorded. Several historians noted the specialized nature of provenance research and that only a handful of people currently have the training and background. They also cited European privacy laws as obstacles to tracking down looted art and establishing provenance.

6. Comment: Although the PCA has not taken an institutional position on whether international arbitration is a suitable mechanism for resolving claims involving Nazi-looted art, PCA officials have determined that additional work to explore this possibility would be valuable. PCA General Counsel Freedburg noted that the PCA intends to convene a small working group of experts to consider next steps and indicated that the group would include experts from American law firms and art museums such as the National Gallery of Art. She said the PCA would welcome the participation of a USG expert in the process should we wish to identify one. End Comment

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